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NOTES.

PARTNERSHIP—RIGHTS IN EQUITY OF PERSON NOMINATED FOR MEMNERSHIP ACCORDING TO POWER IN PARTNERSHIP AGREEMENT.—Where articles of partnership for a definite period give to a partner the right to nominate into the firm another person, what rights has that person in case the remaining partners refuse to admit him? This is the question which arises in *Byrne* v. *Reid* (1902) 71 L. J. Ch. Div. 830. The Court answers that the members of the firm having consented in advance to his admission, such a person is entitled to the usual remedies granted in equity to actual partners and decrees his recognition as a partner by the execution of a partnership deed. This result apparently is favored by the leading English writer on the subject. Lindley, Partnership, 6th ed. 368. It seems a logical advance from the doctrine of continuing partnerships there maintained. Where the parties have agreed to continue the relationship for a specified term the English Courts of Chancery will give extensive remedies in the nature of specific performance, although avoiding the use of that term. Unless the partnership is one at will a member does not inherently possess the power of dissolution. *Allhusen* v. *Borries* (1867) 1 < W. R. 739. Equity will enjoin violations of the agreement indirectly enforcing a continuation of the partnership relation, *England* v. *Curling* (1844) 8 Beav. 129. So an injunction will be granted where one party seeks by unwarranted acts to compel the plaintiff to agree to a dissolution. Lindley, Partnership, 6th ed. 527.

If, then, an English court will not concede the power of a partner to force a dissolution in such cases it does not infringe upon its principles in compelling the acceptance of a person to whom the partners

have once agreed. Nor does its action in doing so work violence to the rule against assisting beneficiaries under a contract. That objection troubled the court in *Page* v. *Cox* (1851) 10 Hare 163. It was avoided by holding the surviving partner a trustee for the deceased partner's widow, the partnership articles having provided for the succession of the widow on the death of either partner. But in fact the person nominated for membership in such cases is not a beneficiary. He is an actual partner who has been accepted by all parties to the agreement. When the law is settled that any partners remaining hold the interest of one retiring in such cases entirely at the disposition of the person duly appointed (*Page* v. *Cox*, *supra*) and that such partners cannot alone dissolve the firm (*Allhusen* v. *Borries*, *supra*) the decision at issue is not surprising in ordering that the appointee be allowed to enjoy actual membership in the firm.

But it is unlikely that such a result would be reached in the United States. The English doctrine of continuing partnerships is here generally repudiated. Burdick, Partnership, 330. In the words of one of our courts: "There can be no such thing as an indissoluble partnership. Every partner has an indefeasible right to dissolve the partnership * * * Even where the partners covenant with each other that the partnership shall continue seven years either partner may dissolve it the next day; the only consequence being that he thereby subjects himself to a claim for damages for breach of his covenant." *Skinner* v *Dayton* (1822) 19 Johns. 513 at p. 538, approved and applied by COOLEY, C. J., in *Solomen* v. *Kirkwood* (1884) 55 Mich. 256. This doctrine is generally put upon the ground that mutual confidence is of the essence of a partnership. *Karrick* v. *Hanniman* (1897) 168 U. S. 328. Now, one of the reasons for the usual refusal of equity to compel the specific performance of partnership articles is the absence of the assurance that the relation, if established, would continue. The court will not decree an unavailing act. Since the dissenting partners would the next moment have the power to work a dissolution, it is therefore very improbable that an American court would deem it wise to administer such relief as that given the plaintiff in the case under discussion.

PROPERTY RIGHTS IN UNDERGROUND WATER FLOWING IN DEFINED BUT UNKNOWN CHANNELS.—It is well settled that when water flows underneath the surface in a defined and known channel, a riparian proprietor has the same rights to its reasonable use which he would have enjoyed if the stream had been on the surface, that is, in such a case the principles applicable to surface streams, govern, and not the principles which relate to precolating waters. However, as there have been few decisions in which the right to use water flowing in an underground channel has been directly in issue, some doubt has existed as to just what qualities are necessary to make an underground channel "defined and known." A recent English case, *Bradford Corporation* v. *Ferrand et al.* (1902) 71 L. J. Ch. Div., p. 859, has thrown much light on the subject. There it was decided that it is not sufficient to prove by the evidence of scientific experts and by excavation that the water flows in a defined channel, but that the course of the channel must be ascertainable by the reasonable in-